



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation on May 28, 2004

**NOTICE OF ACTION TAKEN -- DOCKET OST 2001-8772
CORRECTED COPY***

This serves as notice to the public of the action described below, taken by the Department official indicated (no additional confirming order will be issued in this matter).

Joint Applicants: DELTA AIR LINES, INC., and EL AL ISRAEL AIRLINES, LTD.

Date Filed: April 23, 2004

Relief requested: Exemption from 49 USC section 41301 to permit El Al to conduct scheduled foreign air transportation of persons, property and mail, between a point or points in Israel and Denver, Colorado, via New York, New York (the Denver-New York segment to be conducted by code-share with a U.S. air carrier); and amended Statement of Authorization under 14 CFR Part 212 to permit Delta to carry the code of El Al on Delta's scheduled flights between New York and Denver. */

If renewal, date and citation of last action: The exemption and the amendment to the Statement of Authorization represent new authority.

Applicant representative: Robert E. Cohn (for Delta), 202-663-8060 and John E. Gillick (for El Al), 202-775-9800

DOT analyst: Allen Brown, 202-366-2405

Responsive pleadings: None.

DISPOSITION

Action: Approved

Action date: May 18, 2004

Effective dates of authority granted: The exemption authority is effective on May 18, 2004, through May 18, 2005. The amended Statement of Authorization is effective May 18, 2004, for an indefinite duration.

Basis for approval: Protocol Relating to and Amending the Air Transport Agreement between the United States of America and the Government of the State of Israel of June 13, 1950, as amended, signed July 11, 2001 (Protocol).

Except to the extent exempted/waived, the exemption authority is subject to the terms, conditions, and limitations of our standard exemption conditions (attached), and to the otherwise-applicable terms, conditions, and limitations of El Al's foreign air carrier permit (Order 86-3-58); and the Statement of Authorization is subject to the code-share conditions attached. Moreover, the authority granted is subject to the terms, limitations and conditions of the U.S.-Israel Protocol.

Special conditions/Remarks: We note that El Al requested the exemption for a period of two years. We, however, as is our usual practice in conferring exemption authority in the circumstances presented, are limiting the duration to one year.

*/ The Department has previously approved statements of authorization for Delta-El Al code share services. See, e.g. Notices of Action March 2, 2001, and October 1, 2001, in Docket OST-2001-8772. The joint applicants propose to expand their codeshare arrangement to include Denver as an additional point of service. This corrected Notice clarifies the nature of the request for an amended statement of authorization, as well as the indefinite duration of the statement of authorization we are granting. It also clarifies the conditions attached to the authority awarded by this Notice.

Action taken by: Paul L. Gretch, Director
Office of International Aviation

Under authority assigned by the Department in its regulations, 14 CFR Part 385, we found that (1) our action was consistent with Department policy; (2) grant of the authority was consistent with the public interest; and (3) grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975. To the extent not granted/deferred/dismissed, we denied all requests in the referenced Docket. We may amend, modify, or revoke the authority granted in this Notice at any time without hearing at our discretion.

Persons entitled to petition the Department for review of the action set forth in this Notice under the Department's regulations, 14 CFR §385.30, may file their petitions within seven (7) days after the date of issuance of this Notice. This action was effective when taken, and the filing of a petition for review will not alter such effectiveness.

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

In the conduct of the operations authorized, the foreign carrier applicant(s) shall:

- 1) Not conduct any operations unless it holds a currently effective authorization from its homeland for such operations, and it has filed a copy of such authorization with the Department;
- 2) Comply with all applicable requirements of the Federal Aviation Administration, including, but not limited to, 14 CFR Parts 129, 91, and 36, and with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, the holder shall, before commencing any new service (including charter flights) from a foreign airport that would be the holder's last point of departure for the United States, contact its Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that the security is adequate to allow such airport(s) to be served;
- 3) Comply with the requirements for minimum insurance coverage contained in 14 CFR Part 205, and, prior to the commencement of any operations under this authority, file evidence of such coverage, in the form of a completed OST Form 6411, with the Federal Aviation Administration's Program Management Branch (AFS-260), Flight Standards Service (any change to, or termination of, insurance also shall be filed with that office);
- 4) Not operate aircraft under this authority unless it complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention;
- 5) Conform to the airworthiness and airman competency requirements of its Government for international air services;
- 6) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR Part 203, concerning waiver of Warsaw Convention liability limits and defenses;
- 7) Agree that operations under this authority constitute a waiver of sovereign immunity, for the purposes of 28 U.S.C. 1605(a), but only with respect to those actions or proceedings instituted against it in any court or other tribunal in the United States that are: a) based on its operations in international air transportation that, according to the contract of carriage, include a point in the United States as a point of origin, point of destination, or agreed stopping place, or for which the contract of carriage was purchased in the United States, or b) based on a claim under any international agreement or treaty cognizable in any court or other tribunal of the United States. In this condition, the term "international air transportation" means "international transportation" as defined by the Warsaw Convention, except that all States shall be considered to be High Contracting Parties for the purpose of this definition;
- 8) Except as specifically authorized by the Department, originate or terminate all flights to/from the United States in its homeland;
- 9) Comply with the requirements of 14 CFR Part 217, concerning the reporting of scheduled, nonscheduled, and charter data;
- 10) If charter operations are authorized, except as otherwise provided in the applicable aviation agreement, comply with the Department's rules governing charters (including 14 CFR Parts 212 and 380); and
- 11) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department, with all applicable orders or regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

This authority shall not be effective during any period when the holder is not in compliance with the conditions imposed above. Moreover, this authority cannot be sold or otherwise transferred without explicit Department approval under Title 49 of the U.S. Code.

ATTACHMENT

Delta Air Lines' Statement of Authorization, Docket OST 2001-8772

The code-share operations authorized here are subject to the following conditions -

a) The statement of authorization will remain in effect only as long as i) Delta and El Al continue to hold the necessary underlying authority to operate the code-share services at issue, and ii) the code-share agreement providing for the code-share operations remains in effect;

b) Delta and/or El Al must notify the Department immediately if the code-share under which these code-share services are operated is no longer in effect or if the carriers decide to cease operating all or a portion of the code-share services under the agreement. We expect this notification to be received within ten days of such non-effectiveness or of such decision. Such notices should be filed in Docket OST 2001-8772;

c) The code-sharing operations conducted under this authority must comply with 14 CFR Part 257 and with any amendments to the Department's regulations concerning code-share arrangements that may be adopted. Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirements that the subject foreign air transportation be sold in the name of the carrier holding out such service in computer reservation systems and elsewhere; that the carrier selling such transportation (i.e., the carrier shown on the ticket) accept responsibility for the entirety of the code-share journey for all obligations established in its contract of carriage with the passenger; and that the passenger liability of the operating carrier be unaffected; and

d) The authority granted here is specifically conditioned so that neither Delta nor El Al shall give any force or effect to any contractual provisions between themselves that are contrary to these conditions.

We may amend, modify, or revoke this authority at any time without hearing.